

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ANTHONY J. AGUILAR,

Petitioner,

v.

No. 2:20-cv-00362-RB-LF

DWAYNE SANTISTEVAN, Warden, and
HECTOR H. BALDERAS, Attorney General
of the State of New Mexico,

Respondents.

**ORDER ADOPTING MAGISTRATE JUDGE'S
PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

The Magistrate Judge filed her Proposed Findings and Recommended Disposition on September 22, 2021. (Doc. 11.) The proposed findings notified the parties of their ability to file objections within 14 days and that failure to do so waived appellate review. To date, the parties have not filed any objections and there is nothing in the record indicating that the proposed findings were not delivered.

Wherefore,

IT IS HEREBY ORDERED AS FOLLOWS:

1. The Magistrate Judge's Proposed Findings and Recommended Disposition (Doc. 11) is ADOPTED;
2. The Court finds that Mr. Aguilar has filed a mixed petition. Mr. Aguilar has exhausted **only** the following three claims contained in his habeas petition (Doc. 1):
 - 2) his attorney was ineffective because she did not know how to adequately represent him because she was not a criminal defense lawyer;
 - 3) his attorney was ineffective because she did not file proper motions in a

timely manner and did not prepare an adequate plea; and

- 6) his attorney was ineffective because she did not adequately represent him/failed to counsel him so that he did not understand the plea or knowingly agree to it.

The Magistrate Judge recommended that if Mr. Aguilar wished to proceed with his habeas petition solely on his three exhausted claims, that he file a document so stating within 30 days of this order. On October 1, 2021, Mr. Aguilar filed a letter stating that he voluntarily dismisses his unexhausted claims and wished to proceed on his exhausted claims. (Doc. 12.) The Court accepts Mr. Aguilar's October 1, 2021 letter and will proceed on his exhausted claims.



ROBERT C. BRACK
SENIOR U.S. DISTRICT JUDGE